

ELLERY J PETTIT
6868 SKYPOINTE DR. #2136
LAS VEGAS, NV 89131
Telephone (702) 788-6099
Plaintiff(s) in Proper Person

2011 APR 11 A 0:14

UNITED STATES DISTRICT COURT
District of NEVADA

ELLERY J PETTIT

Plaintiff

vs.

PULTE MORTGAGE LLC and

CHASE BANK and

CHASE HOME FINANCE LLC and

IBM LENDER BUSINESS PROCESS

SERVICES and

MERS (Mortgage Electronic Registration System)

Defendant(s)

Case No.: 2:11-cv-00149-GMN-PAL


OPPOSITION TO DEFENDANTS IBM LENDER
BUSINESS PROCESS SERVICES AND MERS -
MORTGAGE ELECTRONIC REGISTRATION
SYSTEM MOTION TO QUASH SERVICE OF
PROCESS

Ellery J. Pettit, Plaintiff, in proper person, files this Opposition to Defendants' IBM Lender Business Process Services (IBM LBPS) and MERS (Mortgage Electronic Registration System) (MERS) Motion to Quash filed with this Court on March 9, 2011.

Plaintiff asks this Honorable Court to take judicial notice of the fact that I appear without Counsel, am not schooled in the law and legal procedures, and am not licensed to practice law. Therefore my pleadings must be read and construed liberally.

This Reply and Opposition is based upon this Notice, the attached Memorandum of Points and Authorities, and upon all pleadings and documents herein, as well as any argument that may be presented at the hearing of this, or any other motions/matters; the Court is requested to take judicial notice as appropriate.

Dated: April 11, 2011.


Ellery J. Pettit
Plaintiff
In Proper Person

MEMORANDUM OF POINTS AND AUTHORITIES

An original Complaint was filed in the above-entitled action on January 28, 2011. The Summons on the original Complaint was issued on February 3, 2011. The Summons and Complaint were served upon all Defendants as evidenced by the Certificate of Mailing filed with the Court on February 22, 2011 - Dkt. No. 5. Junes Legal Services, INC., the process server, inadvertently did not have the affidavit notarized and has provided a corrected Certificate and Affidavit - attached Exhibit A.

Defendants IBM Lender Business Process Service and MERS acknowledged receipt of the Summons and Complaint, by filing a Motion to Quash. Their filing is Proof of Service pursuant to NRCP 4 (g) (4) which states that proof of service includes the written admission of the Defendant. Further, NRCP 4 (g) states "In case of service otherwise than by publication, the certificate or affidavit shall state the date, place and manner of service. Failure to make proof of service shall not affect the validity of the service." This is consistent with Fed Rules of Civ. Proc. Rule 4.

Since the process server incorrectly mailed the summons first class, the Plaintiff elected to offer IBM LBPS and MERS the opportunity to waive service. Under Fed. R. Civ. P. 4(d), the only acceptable means of serving Defendants by first class mail is to request a waiver of service.

Defendants IBM LBPS and MERS received another copy of the Complaint along with the waiver form on March 16, 2011. Attached Exhibit B is the certified mail receipts. They acknowledge receipt of this as well, in the form of a personal letter sent directly to the Plaintiff – attached Exhibit C. In the letter, counsel for IBM LBPS and MERS states "I do not have authority from my clients to waive the service requirements." They refuse to waive service. They also threaten the Plaintiff with sanctions if he does not refrain from sending any more correspondence directly to the Defendants.

CONCLUSION

Defendants IBM LBPS and MERS have twice received a copy of the Complaint; have provided Written Admission of the Complaint through their Motion to Quash Service of Process and a letter refusing to accept a Waiver of Service of Summons; and yet persists in the assertion that service has not been completed. Plaintiff has made every attempt to properly effect service on these Defendants as provided under Fed. R. Civ. Proc. 4 (d) and Fed. R. Civ. Proc. 4(m). Instead, Defendants have chosen to request this Court to issue an Order quashing the

1 service upon these Defendants and require Plaintiff to appropriately effectuate service. As stated in the Complaint
2 filed January 28, 2011, Plaintiff is forced to bring this action in order to 1) prevent double paying this bank on the
3 debt, and/or 2) pay the wrong party, and/or 3) prevent the wrongful taking of the family home by a bank no longer
4 having a right to foreclose on it. All Defendants in this case have claimed ownership of the debt and their rights to
5 the family home. This lawsuit is filed to determine who is the real party in interest and who has a claim as the
6 Holder in Due Course of the mortgage documents. Defendant Chase has filed an answer to the Complaint on April
7 4, 2011 and the Court has Ordered discovery to begin. To request that Plaintiff serve Defendants IBM LSC and
8 MERS for a third time, even though pursuant to Fed. R. Civ. Proc. 4(d) 2 Defendants would be responsible for all
9 related expenses, would delay the final outcome of this Case, create undue burden on the Court system, and be
10 overburdensome to Plaintiff. Therefore, Plaintiff asks this Court to deny Defendants IBM LSC and MERS Motion
11 to Quash Service and to enter an Order compelling said Defendants to answer the Complaint so that there are no
12 further delays in obtaining a resolution to this case.

13
14 Date: April 11, 2011

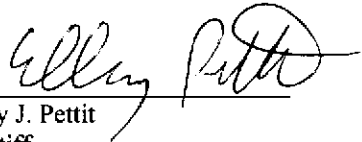

Ellery J. Pettit
Plaintiff
In Proper Person

EXHIBIT A

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1 AFFT

2 ELLERY J. PETTIT

3 6868 SKYPOINTE DR #2136

4 LAS VEGAS, NV 89131

5 702-788-6099

6 Plaintiff: IN PRO PER

7 UNITED STATES DISTRICT COURT
8 DISTRICT OF NEVADA

9 ELLERY J. PETTIT

10 Plaintiff(s)

11 Vs.

CASE NO: 2:11-CV-00149-GMN-PAL
DEPT:

12 PULTE MORTGAGE LLC AND CHASE BANK
13 AND CHASE HOME FINANCE LLC AND
14 IBM LENDER BUSINESS PROCESS SERVICES
15 AND MERS (MORTGAGE ELECTRONIC
16 REGISTRATION SYSTEM)

17 Defendant(s)

18
19 AFFIDAVIT OF SERVICE BY MAILING

20 Pursuant to NRCP 4(d)(1)(2), I, Rebecca Godwin, certify that I am over the age of 21 years, and not a party to nor interested in
21 the above action. I certify that on February 3, 2011, I deposited for mailing via First Class U.S. Mail, with postage fully prepaid,
22 a true and correct copy of the Summons and Complaint in envelopes addressed to the following:

23 CHASE BANK
24 C/O JAMES DIMON, CEO
25 270 PARK AVE FL#12
NEW YORK, NY 10017

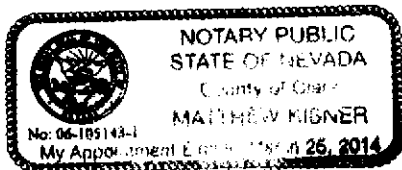
1 CHASE HOME FINANCE, LLC
2 C/O GLENN J. MOURIDY, PRESIDENT/CEO
3 194 WOOD AVE.
4 S. ISELIN, NJ 08830

5 IBM LENDER BUSINESS PROCESS SERVICE
6 C/O AFEAL ASSUR, PRESIDENT
7 8501 IBM DR., BLDG 201 #2DD188
8 CHARLOTTE, NC 28262

9 MERS (MORTGAGE ELECTRONIC REGISTRATION SYSTEM)
10 C/O PAUL BOYNANNO
11 1818 LIBRARY ST. #300
12 RESTON, VA 20190

13 PULTE MORTGAGE LLC
14 C/O CEO
15 7475 S. JOLIET ST.
16 ENGLEWOOD, CO 80112

17 Dated March 7, 2011



21 Subscribed and Sworn to before me, Matthew Kisner
22 This 7 day of MARCH, 2011.

23 Notary Public in and for Clark County, Nevada

24 3/7/11 ATTENTION CLERK OF COURT: PLEASE NOTE THAT DUE TO AN OVERSIGHT IN MY OFFICE, I FAILED TO
25 HAVE THIS DOCUMENT INITIALLY NOTARIZED ON 2/3/11. THIS SHOULD IN NO WAY HINDER PLAINTIFF'S
CASE. REBECCA GODWIN.

Rebecca Godwin

Junes Legal Services, INC
630 S. 10th St. Suite B
Las Vegas, NV 89101
702-579-6300 PH
Nevada Process License #1068



JUNES LEGAL SERVICES, INC.
630 S. 10TH St., #B, Las Vegas, NV 89101
Phone: (702) 579-6300 Fax: (702) 259-6249

MARCH 7, 2011

RE: PETTIT v PULTE MORTGAGE, LLC; ET AL
CASE NO: 2:11-CV-00149-GMN-PAL

TO WHOM IT MAY CONCERN:

The incorrect NRCP code was used when initially preparing the attached affidavit of service by mailing. This was a clerical error and in no way should hinder the plaintiffs' case referenced above. Service was made pursuant to NRCP (d)(1 & 2).

Thank you,

Rebecca Godwin

Junes Legal Services, INC
630 S. 10th St. Suite B
Las Vegas, NV 89101
702-579-6300 PH
Nevada Process License #1068

EXHIBIT B

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SENDER: COMPLETE THIS SECTION

Complete Items 1, 2, and 3. Also complete Item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits.

Article Addressed to:

Brooks Baner LLP
 Michael Brook Esq.
 Jeffrey Todd, Esq.
 300 S. 4th St. #815
 Las Vegas, NV 89101

COMPLETE THIS SECTION ON DELIVERY

A. Signature, ☒ Agent ☐ Addressee
[Signature]
 B. Received by (Printed Name) *Guillermo L. Garcia* C. Date of Delivery *3/16/11*
 D. Is delivery address different from item 1? ☐ Yes ☐ No
 If YES, enter delivery address below:

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☒ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.
 4. Restricted Delivery? (Extra Fee) ☐ Yes

Article Number
 (Transfer from service label) 7010 1870 0000 7005 4433

EXHIBIT C

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Nevada Office
300 S. 4th Street, Suite 815
Las Vegas, Nevada 89101-6014
702.851.1191
702.851.1198 (F)

California Office
2677 N. Main Street, Suite 560
Santa Ana, California 92705-6632
714.558.1961
714.564.9302 (F)



BROOKS BAUER LLP
ATTORNEYS AT LAW

MICHAEL R. BROOKS⁺
BRUCE T. BAUER^o

NICOLE J. CANNIZZARO⁺
REGINA "GINA" HABERMAS⁺
JEFFREY J. TODD⁺
TELLA U. WILLIAMS⁺

KELLY O. SLADE⁺

Licensed:
^oCalifornia ⁺Nevada

March 23, 2011

VIA USPS MAIL

Ellery Pettit
6868 SkyPointe Dr. #2136
Las Vegas, Nevada 89131

Re: Case Name: Pettit v. Pulte Mortgage, et. al.
Property Address: 6868 SkyPointe Dr. #2136, Las Vegas, Nevada 89131
Case No.: 2:11-cv-00149-GMN-PAL
File No.: 1163-0002

WAIVER OF SERVICE OF SUMMONS

Dear Ms. Pettit:

As you know, I have been retained to represent IBM Lender Business Process Services and Mortgage Electronic Registration Systems in the above-referenced matter. I am in receipt of the proposed Waiver of Service of Summons, which you sent to my office on March 15, 2011. Please be advised that I will not be signing these documents on behalf of my clients. You have not properly served my clients in accordance with the Federal Rules of Civil Procedure, and thus, I will not execute a document that subjects my clients to the Court's jurisdiction. Moreover, I do not have authority from my clients to waive the service requirements.

Additionally, I have been informed by my clients that you continue to send mail directly to them. Any contact by you directly with my clients is highly inappropriate. I demand that you cease all communication with my clients immediately. Please direct all communications directly to the undersigned. Failure to immediately cease communications with my clients will be reported to the Court and may subject you to sanctions.

Thank you for your immediate attention to this matter.

Sincerely,

BROOKS BAUER LLP


Jeffrey J. Todd, Esq.

Certificate of Mailing

I, Ellery J. Pettit, hereby certify that a copy of the Opposition to Defendants IBM Lender Business Process Services and MERS Motion to Quash Service of Process filed on the 11th day of April, 2011, in the above-entitled case was mailed by me on April 12th, 2011 by depositing copies thereof in a sealed envelope, first-class postage prepaid, in the United States mail, to

Michael R. Brooks
Brooks Bauer LLP
300 So. 4th Street, Suite 815
Las Vegas, NV 89101
*Attorney to be Noticed for IBM Lender
Business Process Services and MERS -
Mortgage Electronic Registration System*

Jeffrey J. Todd
Brooks Bauer LLP
300 So. 4th Street, Suite 815
Las Vegas, NV 89101

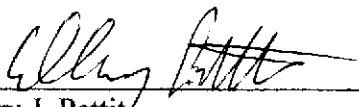
Jay Earl Smith
Smith Larsen & Wixom
Hills Center Business Park
1935 Village Center Circle
Las Vegas, NV 89134
*Attorney to be Noticed for
Chase Home Finance LLC*

Katie M. Weber
Smith Larsen & Wixom
Hills Center Business Park
1935 Village Center Circle
Las Vegas, NV 89134
*Attorney to be Noticed for
Chase Home Finance LLC*

Pulte Mortgage LLC
Richard J. Dugas, Jr. CEO
7475 South Joliet St.
Englewood, CO 80112

Chase Bank
James Dimon, CEO
270 Park Ave., Floor 12
New York, NY 10017-7924

Dated: April 12th, 2011



Ellery J. Pettit
Plaintiff
In Proper Person